THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1228 and 1305 OF 2006

24.03.2006

Between:

Prof. R.Ratna Swamy, S/o.late R.Tirupatalai

… Petitioner

AND

The Principal Secretary to Government of Andhra Pradesh,
Higher Education Department, Secretariat, Hyderabad

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1228 and 1305 OF 2006

COMMON ORDER:

The first of the two writ petitions herein is filed questioning orders passed by the Director of Collegiate Education (DCE), Government of Andhra Pradesh (GoAP), in proceedings No.684/Admn.IV-2/2005 dated 21.4.2005 as confirmed by the orders of Government of Andhra Pradesh (GoAP) in G.O.Rt.No.44 Higher Education (CE-II2) Department, dated 18.1.2006. Other writ petition is also filed for the similar relief and, therefore, it is expedient to dispose of both by a common order.

The brief fact of the matter (by referring to the parties as arrayed in W.P.No.1228 of 2006) necessary for disposal of these two writ petitions is as follows. The petitioner statedly was instrumental in establishment of Sri Velugode Educational Society (VES) with eleven members. VES started SNSR Degree College during the academic year 1977-1978. Since then the Managing Committee of VES passed resolutions appointing the petitioner as Correspondent of the Decree College. As alleged that all members of VES unanimously resolved not to interfere with the functioning of the petitioner as Correspondent. The DCE also approved the correspondentship of the petitioner in respect of Degree College with effect from 19.7.1979 and in respect of Junior College with effect from 23.10.1980. The petitioner is continuing as such till date. Six of the former members of society expired. In 1981 Rural Development Society (RDS), with the similar objective, was founded by philanthropists of Velugode, and VES entrusted the management of RDS.

It is alleged that one Sri A.Siva Sankara Reddy, who is working in the office of SNSR Degree College, and one Sri M.V.Bhaskara Reddy claiming themselves to be members of VES fabricated resolutions and approached the second respondent for change of correspondentship of the Degree College. By proceedings dated 21.4.2005, DCE approved the change of correspondentship based on the resolution, which allegedly does not refer to the change of correspondentship. Aggrieved by the same, the petitioner filed a writ

petition being W.P.No.11152 of 2005. This Court suspended the proceedings of DCE. In obedience thereto, the petitioner was allowed to function as Correspondent of the Degree College. Subsequently, by an order dated 02.9.2005, this Court dismissed the writ petition on the ground that the petitioner had already invoked the remedy of appeal under Section 89(b) of A.P. Education Act, 1982 (the Act, for brevity). The petitioner thereafter filed an appeal being W.A.No.1752 of 2005, which was dismissed as withdrawn with permission to pursue the appeal. The GoAP passed the impugned G.O., after disposal of writ appeal.

In W.P.No.1305 of 2006, first petitioner alone is the founder member of VES and petitioners 2 to 5 are allegedly legal representatives of founder members. They filed the writ petition assailing G.O.Rt.No.44 Higher Education (CE.II-2) Department, dated 18.1.2006, supporting the plea of the petitioner in W.P.No.1228 of 2006.

The impugned order is challenged on many grounds including the ground that the proceedings issued by DCE is violative of principles of natural justice. In support of this, reliance is placed on the Division Bench judgment of this Court in **Sri Victoria Aided Upper Primary School Society, Rajahmundry v P.Jagannatha Rao and others**[1].

Respondents 1 and 2 have filed separate counter affidavits. Respondents 3 and 4 have filed a common counter affidavit. Both the counter affidavits advert to genesis of the dispute elaborately. It is, however, not necessary to give detailed account of these pleadings. Suffice to mention that they allege that fourth respondent was appointed as Correspondent of Degree College by VES legally and validly, and DCE has not committed any illegality in approving change of correspondentship of SNSR Degree College from the petitioner in favour of the fourth respondent. There is, however, no denial that DCE did not issue any notice to the petitioner before approving the change of correspondentship though it is alleged that the transfer of management from VES to RDS is illegal and invalid for want of prior approval by the competent authority.

After perusing the pleadings, the relevant documents and considering the submissions made by the counsel for the rival parties, two things become clear. There have been disputes among the

founder members and those members, who subsequently joined as members of VES. There is also no agreement among the existing members of VES regarding the management of the Degree College. Whether VES validly passed resolution in favour of fourth respondent is itself a question? This has to be decided by appropriate authority. If there is a dispute among the members of society or between the society and the members, it has to be resolved in accordance with the provisions of the A.P. Societies Registration Act, 2001. It appears, when the DCE passed orders on 21.4.2005 all this was not placed before the said authority. One possible reason for this could be the non-issue of notice to the petitioner while he was removed and the change of correspondentship was approved in favour of fourth respondent.

Whether DCE could have passed an order without notice to the petitioner. In **P.Jagannatha Rao v Commissioner and Director of School Education**[2], the petitioner was Correspondent of Sri Victoria Aided Upper Primary School Society, Rajahmundry. By proceedings dated 01.12.2002, the Director of School Education approved the change of correspondentship in favour of one P.Chandra Kumar (fourth respondent therein). The said order was assailed in the writ petition. The learned single Judge noticed that there were disputes among the members and that the Director of School Education approved the change of correspondentship without notice to the petitioner therein. It was contended by State that before approving the change of correspondentship under Section 24(2) of the Act, there is no necessity to afford an opportunity or issue notice to the existing correspondent. This Court rejected the submission and allowed the writ petition observing as under.

> In the absence of statutory prescription excluding the principles of natural justice, the seminal principle of natural justice *audi alteram partem* is implicated and is not excluded by mere statutory silence. Vide *Swadeshi Cotton Mills v. Union of India*[3] and *Maneka Gandhi v. Union of India*[4]. **As demonstrably the impugned order had been issued by first respondent without notice and opportunity to the writ petition, who as a consequence of this order has clearly suffered adverse civil consequences, the order is vitiated for violation of the principles of natural justice.** The dispute between the petitioner and the 4th respondent as to who ought to be the correspondent of the school is outside the province of this writ

> petition. Such dispute, if any, have to be adjudicated in an appropriate forum. It is within the jurisdiction, province and competence of the first respondent to determine the appropriate person to be appointed as a correspondent of Sri Victoria Aided Upper Primary School, Rajahmundry, **but before effecting any change in the correspondentship the first respondent is obligated at least to provide a minimal opportunity to the petitioner**.
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> (emphasis supplied)

Aggrieved by the judgment of the learned single Judge referred to hereinabove, writ appeal being W.A.No.201 of 2004 was filed. The Division Bench of this Court in **Sri Victoria Aided Upper Primary School Society, Rajahmundry** (supra), affirmed the decision of the learned single Judge opining thus.

> The learned Single Judge, in our considered opinion, rightly interfered with the impugned order dated 01.12.2002 of the second respondent herein on the simple ground that it has not been preceded by an opportunity to the first respondent-writ petitioner. The learned Single Judge came to the correct conclusion that the order dated 01.12.2002 has resulted in serious civil consequences so far as the first respondent-writ petitioner is concerned. The learned Single Judge took the view that the change of correspondentship could not have been approved in favour of the 5th respondent herein with effect from 20.10.2002, under the impugned order. The learned Single Judge did not express any opinion whatsoever with regard to claim of any of the parties for being appointed as correspondent of the institution in question. On the other hand the learned Single Judge granted liberty to the second respondent-Commissioner and Director of School Education to afford an opportunity to the first respondent-writ petitioner before taking any action under Section 24 of the A.P. Education Act, 1982. The order, in our considered opinion, does not suffer from any infirmity.

Though the learned Government Pleader for Higher Education and the learned Counsel for the respondents 3 and 4 vehemently dispute the legal position as above, this Court does not find any justification to differ from the view expressed by the Division Bench, which is binding on this Court.

When the petitioner filed appeal before the government, he specifically contended that the orders passed by the DCE are illegal, as the same were passed without giving any opportunity or notice to

him. Curiously, nowhere in their order, the Government adverts to this aspect of the matter. This only shows that the order was passed without application of mind and based on some other aspect, which has no direct bearing on the controversy before the DCE. Therefore, the impugned G.O. is unsustainable.

Accordingly, W.P.No.1228 of 2006 is disposed of and the impugned G.O.Rt.No.44 Higher Education (CE-II2) Department, dated 18.1.2006 confirming the orders of the Director of Collegiate Education in Rc.No.684/ Admn.IV-2/2005 dated 21.4.2005 is set aside. The matter is remitted to the DCE with a direction to issue notice to the petitioner and respondents 3 and 4, and dispose of the matter in accordance with law within a period of two weeks from the date of receipt of a copy of this order. It is brought to the notice of this Court that the petitioner is only correspondent and one Sri A.Maddileti Reddy, Principal of SNSR Degree College is having powers of a drawing officer. There cannot be any objection to continue the same position till the matter is decided by the Director. If the petitioner in W.P.No.1305 of 2006 wants to be heard by the Director, it is open to him to file an application before the Director. In view of this, no further orders are necessary in W.P.No.1305 of 2006.

The writ petitions, with the above observations and directions, are accordingly disposed of. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

March 24, 2006.

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[1] 2004(2) ALT 456 (DB)

[2] 2004(1) ALT 404

[3] AIR 1981 SC 818

[4] AIR 1978 SC 587